



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 9, 1996

Ms. Christine T. Rodriguez
Staff Attorney
Legal and Compliance, MC 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR96-1615

Dear Ms. Rodriguez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100487.

The Texas Department of Insurance (the "department") received a request for "[t]he entirety of any and all files containing complaints and/or disciplinary actions against Cloy David Feachen." You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.107, 552.111, and 552.112 of the Government Code. You have submitted representative samples of the information at issue to this office for review.¹

Several of the documents that you submitted to us deal with the financial condition of Southern Benefits Consultants, Inc. ("SBC"). You state that these financial memoranda and letters were prepared by or for the use of the department, and you contend that these documents are excepted from disclosure under section 552.112 of the Government Code. Section 552.112(a) excepts from disclosure "information contained in or relating to examination, operating, or condition reports prepared by or for an agency responsible for the regulation or supervision of financial institutions or securities, or

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

both." Insurance companies and employer groups hired SBC, a third party administrator, to process and pay the claims of policyholders. The department is responsible for the regulation and supervision of third party administrators engaged in this type of business. See Ins. Code art. 21.07-6. Thus, we agree that the documents dealing with the financial condition of SBC are excepted from disclosure pursuant to section 552.112(a).² We have marked these documents accordingly.

Among the documents you submitted to this office are several memoranda and letters that you believe are excepted from disclosure under section 552.107 of the Government Code. Section 552.107 excepts information from disclosure if:

it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 (1990) at 5. Section 552.107(1) does not except purely factual information from disclosure unless the factual information is communicated by the client to the attorney, Open Records Decision Nos. 574 (1990), 559 (1990), nor does it protect information gathered by an attorney as a fact-finder, Open Records Decision No. 462 (1987). The documents for which you invoke section 552.107(1) contain both legal opinion and severable factual information. Only the opinion portions of the documents may be withheld from disclosure under section 552.107(1). We have marked the documents accordingly.³

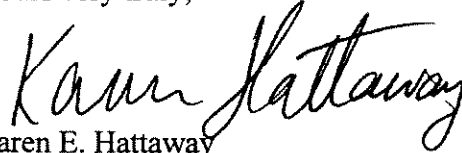
We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue

²You contend that one of these documents also contains medical information and personal financial information that is excepted from disclosure under section 552.101 of the Government Code. Because we find that this document is protected in its entirety under section 552.112(a), we need not address your claim that section 552.101 excepts portions of this document from disclosure.

³You also contend that these memoranda and letters are excepted from disclosure under section 552.111 of the Government Code. As section 552.111 generally protects only advice, opinion, and recommendations, any protection under section 552.111 will usually be no greater than the protection offered under section 552.107. See Open Records Decision No. 574 (1990) at 2. Here, section 552.111 does not except from disclosure any of the information in the memoranda and letters that we have ruled the department may not withhold under section 552.107. Hence, we need not address your section 552.111 arguments.

under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Karen Hattaway", written in a cursive style.

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref.: ID# 100487

Enclosures: Submitted documents

cc: Ms. Julianne Boone
Legal Assistant
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(w/o enclosures)